IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 655 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DIPAKBHAI JAYANTILAL PANDYA - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
HL PATEL ADVOCATES for Applicant(s) : 1,
Mr. RC Kodekar, Addl. PUBLIC PROSECUTOR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 19/07/2007
ORAL JUDGMENT

Rule. Shri RC Kodekar, learned APP waives service of Rule on behalf of the State. By way of this petition under Article 226 of the Constitution of India read with Section 482 of

the Code of Criminal Procedure, the petitioner, original-accused has prayed for an appropriate order to release the petitioner on bail in connection with Complaint being C.R. No. I-13/2003 registered with Gandhinagar Economic Zone Police Station for the offences punishable under Section 406, 420, 467, 468 and 120(B) of the Indian Penal Code by invoking provisions of Section 437(6) of the Code of Criminal Procedure.

2. A criminal complaint came to be filed against the petitioner, original-accused, with Gandhinagar Economic Zone Police Station for the offences punishable under Section 406, 420, 467, 468 and 120(B) of the Indian Penal Code and the petitioner was arrested on 12.10.2003. Thereafter a chargesheet came to be filed against the petitioner on 3.1.2004 and charge came to be framed against the petitioner on 5.10.2006. As the trial was not concluded within the period of 60 days from the date of initiation of recording the evidence which according to the petitioner

was commenced on 19.10.2006 and till 9.1.2007 83 days were over and still the trial was not concluded the petitioner, original-accused submitted application on 9.1.2007 for releasing him on bail by invoking the provisions of Section 437(6) of the Cr.P.C. The said application came to be dismissed by the learned Chief Metropolitan Magistrate by his order dated 23rd January 2007. Being aggrieved and dissatisfied with the same, the petitioner, original-accused preferred Criminal Application before the learned City Sessions Judge, Ahmedabad by way of Revision Application No. 52 of 2007 which came to be dismissed by the learned Revisional Court by judgment and order dated 19th February 2007. Being aggrieved and dissatisfied with the orders passed by both the Courts below in not releasing the petitioner on bail under Section 437(6) of the Criminal Procedure Code the petitioner original-accused has preferred the present petition under Article 226 of the Constitution of India for the aforesaid relief.

3. Shri Vijay Patel, learned advocate appearing on behalf of the petitioner, original-accused has submitted that as the trial is not concluded within the period of 60 days from the date of recording the evidence there is a right accrued in favour of the original-accused to release him on bail and at the time when the petitioner submitted the application for releasing him on bail invoking the provisions of Section 437(6) of the Code of Criminal Procedure after the first date of recording the evidence 83 days were over and still the trial was not concluded and therefore the petitioner was required to be released on bail. It is submitted that the object of framing Section 437(6) of the Criminal Procedure Code is that an accused should not be continued in jail for a longer time and that the trial is concluded as early as possible. Therefore it is submitted that both the courts below have materially erred in not releasing the petitioner on bail under Section 437(6) of the Cr.P.C. Shri Patel has relied upon Unreported

decision of the learned Single Judge of this Court in the case of ***Bhikhaji Chaturji Thakore & Others Vs. State of Gujarat & Anr.,*** in *Criminal Revision Application No. 243 of 2007* and allied Criminal Revision Applications in support of his submission to release the petitioner on bail. On the other hand, while opposing the present application, the learned APP has submitted that it is not that automatically after completion of 60 days from the first date of recording the evidence the petitioner accused has right to be released on bail. It is submitted that the petitioner, original-accused can move an application and the learned Magistrate is duty bound to consider the same and for the reasons to be recorded the learned Magistrate can reject such application also. It is submitted by him that in the present case it is not that there is deliberate delay on the part of the Prosecution in trial. It is submitted that on going through the Rojkam also it cannot be said that there is a delay on the part of the Prosecution in

proceeding further with the trial. It is also further submitted that even for some period the record was called for by the learned Revisional Court in the revision filed by the petitioner and therefore during that period the trial was not conducted, otherwise the trial is going on. It is submitted that earlier also the petitioner had moved applications for releasing him on bail right upto Hon'ble Supreme Court and the same are dismissed and looking to the seriousness of the offences for which the petitioner is charged the learned Trial Court has rightly rejected the application of the petitioner for releasing him on bail. Therefore it is requested to dismiss the present application.

4. Heard the learned advocates appearing on behalf of the respective parties. At the outset, it is required to be noted that the petitioner is charged for the offences punishable under Section 406, 420, 467, 468 and 120(B) of the Indian Penal Code and the original-complainant is Senior

Manager of Federal Bank; the allegations against the petitioner are very serious in nature; the petitioner had tried to be released on bail earlier; the first order of this Court whereby the first application of the petitioner came to be dismissed as withdrawn by this Court was passed on 15.7.2004. Thereafter again the petitioner submitted one another application being Criminal Misc. Application No. 1381/2005 before this Court which came to be dismissed by the learned Single Judge on 18.2.2005. Thereafter, the petitioner had approached the Hon'ble Supreme Court and the Hon'ble Supreme Court vide order dated 1.4.2005 dismissed the Special Leave to Appeal (Cri.) No. 1472/2005 while observing that “in case the trial is not concluded within a period of one year, it would be open to the petitioner to move the High Court afresh for grant of bail. If such an application is filed, the same shall be considered on its own merits.” Thereafter, the petitioner has preferred one another Criminal Misc. Application

No. 7755 of 2006 which came to be dismissed by the learned Single Judge of this Court vide order dated 18.8.2006 and in Paragraph 5 thereof it is observed by the learned Single Judge as under;

> *“This being a successive bail application, it can be considered on merits, if substantial change of circumstances is shown. It is true that the trial has not commenced but the Rojkam indicates that one or the other accused persons, though they belong to the same family, has consistently remained absent before the Court and the Court was even constrained to issue warrant against them. It, therefore, does not lie in the mouth of the applicant to say that because the trial has not commenced his case may be considered on merits.”*

Thereafter, the petitioner has preferred the application before the learned Chief Judicial Magistrate for releasing him on bail invoking provisions of Section 437(6) of Cr.P.C., contending inter alia that as the trial is not concluded within 60 days he should be released on bail and the same was dismissed by the learned Magistrate on merits which is confirmed by the learned Revisional Court. Now, considering the provisions of Section 437(6) of the Code the petitioner/accused who is in jail for a period of 60 days is entitled to make an application for releasing him on bail and the Court in view of Section 437(6) of the Code is obliged to release him on bail unless for reasons recorded by the Court he is not required to be released on bail. Thus, on bare reading of Section 437(6) of the Code it appears that the Court for the reasons recorded may refuse to release an accused on bail. Therefore the discretion is vested with the learned Trial Court and for the reasons recorded it may refuse to release the accused on

bail even after a period of 60 days. Thus, the learned Magistrate has to consider an application, and in the present case the learned Trial Court has given cogent reasons for not releasing the petitioner on bail under Section 437(6) of the Cr.P.C. The allegations against the petitioner are very serious in nature, i.e.,of creating forged and bogus documents and getting loan of huge amount by defrauding the bank. The learned Trial Court has also considered that it cannot be said that there is a delay on the part of the Prosecution in not proceeding further with the trial. It is also considered by the learned Trial Court that in the chargesheet more than 36 witnesses are mentioned and it is likely to take some time to examine all those 36 witnesses and to consider the documents. Thus, considering the seriousness of the offence, the learned Trial Court has rejected the application for releasing the petitioner on bail under Section 437(6) of the Code. Even as observed by the learned Single Judge of this

Court while dismissing the application on 18.8.2006 in Para 5 of the order that it was the accused who consistently remained absent before the Court. Now considering the above if the application of the petitioner to release on bail under Section 437(6) of the Code is rejected and when there is no delay on the part of the Prosecution in proceeding further with the trial it cannot be said that both the courts below have committed error which requires interference by this Court in exercise of power under Article 227 of the Constitution of India.

5. So far as the reliance placed upon the learned Single Judge of this Court in the case of ***Bhikhaji Chaturji Thakore & Others [supra]*** is concerned, it is to be noted that in the said case the question was with regard to cancellation of bail and not with regard to grant of bail under Section 437(6) of the Code. It cannot be gainsaid that there is a difference between considering an application for bail and

considering an application for cancellation of bail.

6. For the reasons stated hereinabove and considering the order passed by the learned Chief Judicial Magistrate which is confirmed by the learned Revisional Court and the reasons given by the learned Trial Court rejecting the application for bail in view of the fact that the offences alleged against the petitioner being very serious in nature the petitioner is rightly not released on bail. Under these circumstances, the present application is required to be dismissed and is accordingly dismissed. Rule is discharged.

[M.R. Shah, J.]

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